



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Mineral Point Quality Motors, LLC

Case No. TR-13-0032

FINAL DECISION

On February 18, 2013, Jennifer McDaniel filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Mineral Point Quality Motors, LLC (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Democrat Tribune, a newspaper published in Mineral Point, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 30, 2013. No additional claims were filed. Jennifer McDaniel's claim was forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on January 7, 2014. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Jennifer McDaniel
P. O. Box 184
Deerfield, WI 53531

Terry Douglas
Mineral Point Quality Motors, LLC
17539 County Road "G"
Mineral Point, WI 53565

Andrew Hirsch
Mineral Point Quality Motors, LLC
1886 West Timber Drive
Platteville, WI 53818

Auto Owners Insurance Company
Bond Department
P. O. Box 30660
Lansing, MI 48909

FINDINGS OF FACT

1. Mineral Point Quality Motors, LLC (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 363 Dodge Street, Mineral Point, Wisconsin. The dealership was placed out of business effective September 28 2012.
2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) with a beginning date of May 5, 2010, and ending date of May 5, 2013 (Bond #66082562 from Auto Owners Insurance Company).
3. On May 8, 2012, Jennifer McDaniel (McDaniel) purchased a 2002 Pontiac Grand Prix, vehicle identification number 1G2WK52J12F244154, from the Dealer. According to the purchase contract, McDaniel paid \$4,740.32, including taxes and registration fees, for the vehicle. The purchase price also included an extended warranty covering the vehicle. The premium for the extended warranty was \$1225.00.
4. McDaniel did pay to the Dealer the \$1225.00 premium for the extended warranty. McDaniel did not receive written confirmation of the warranty. She contacted the Dealer and was told that the application for the extended warranty had not been submitted. The Dealer promised to refund the premium for the extended warranty to McDaniel.
5. McDaniel never received a refund of the premium for the extended warranty from the Dealer. McDaniel filed a complaint against the Dealer with the Department. The investigator assigned to the complaint attempted to contact the owners of the dealership but was unsuccessful. The dealership was already closed. On February 18, 2013, McDaniel filed a claim against the surety bond of the Dealer in the amount of \$1225.00.
6. The Dealer's retention of the premium McDaniel paid for the extended warranty constitutes violations of Wis. Stat. § 218.0116(1)(c) (willfully defrauding a retail buyer) and Wis. Stat. § 218.0116(1)(cm) (willful failure to perform any written agreement with any retail buyer). The loss sustained by Jennifer McDaniel was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

7. Jennifer McDaniel submitted documentation to support a bond claim of \$1225.00, the amount she paid for the warranty. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Auto Owners Insurance Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)*].

. . . .

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to the claim described above, the Dealer violated Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm). Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm) are both identified in Wis. Admin. Code § Trans 140.21(1)(c)1. The claimant sustained a loss as a result of these violations.

CONCLUSIONS OF LAW

1. The claim of Jennifer McDaniel arose on May 8, 2012, the date she purchased an extended warranty through the Dealer and the Dealer failed to submit the premium paid by Jennifer McDaniel to the warranty company. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on May 5, 2012. The claim arose during the period covered by the surety bond.

2. Jennifer McDaniel filed a claim against the motor vehicle dealer bond of the Dealer on February 18, 2013. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Jennifer McDaniel sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Jennifer McDaniel has submitted documentation to support a claim in the amount of \$1225.00.

4. The Division of Hearings and Appeals has authority to issue the following orders.

ORDER

The claim filed by Jennifer McDaniel against the motor vehicle dealer bond of Mineral Point Quality Motors, LLC, is APPROVED in the amount of \$1225.00. Auto Owners Insurance Company shall pay Jennifer McDaniel this amount for her loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on February 10, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
MARK F. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.